

# STATE OF COLORADO

## PUBLIC UTILITIES COMMISSION

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Vincent Majkowski, Commissioner  
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May 29, 1996

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Office of the Secretary  
Federal Communications Commission  
1919 M Street NW  
Room 222  
Washington, DC 20554

Dear Sir:

Enclosed please an original plus 16 copies of Colorado's Reply Comments in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98.

Yours truly,

A handwritten signature in cursive script, reading "Patricia A. Friscic".

Patricia A. Friscic  
Administrative Assistant

Enclosures

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**  
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**IN THE MATTER OF** )  
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**Implementation of the** )  
**Local Competition** )  
**Provisions in the** )  
**Telecommunications Act of**  
**1996**

**CC Docket No. 96-98**

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**REPLY COMMENTS OF  
THE COLORADO PUBLIC UTILITIES COMMISSION**

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**May 30, 1996**

## **Reply Comments**

1. The Colorado Public Utilities Commission (CoPUC) respectfully submits these reply comments before the Federal Communications Commission (FCC or Commission) regarding the FCC's Notice of Proposed Rulemaking (NPRM) relating to the implementation of local competition.

2. After review of the comments filed by many of the other interested parties in this NPRM, the CoPUC addresses two key related issues: (1) the jurisdictional issue regarding FCC and state responsibilities under the Telecommunications Act of 1996 (1996 Act) and (2) the costing and pricing issues of interconnection, unbundled network elements, and services made available for resale.

### **Jurisdictional Issues**

3. The CoPUC continues to support the position taken in our initial comments regarding the responsibilities assigned to the FCC and to state commissions under the 1996 Act. The FCC should have responsibility for establishing minimum standards in specific areas. These may include rules relating to:

- technical standards for interconnection, especially those standards intended to ensure interoperability of carrier networks;
- general specifications of the technically feasible points of interconnection;
- technical standards relating to collocation (*e.g.* the type of equipment which may be collocated);
- general specifications of network elements which must be unbundled; and

- standards and procedures before the Commission relating to the provisions of § 252 (e)(5) (Commission shall assume responsibility under § 252 if a State Commission fails to act).

4. The CoPUC believes that uniform national standards on the above-listed subjects are appropriate, and will promote competition in the local exchange market without adversely affecting the availability and affordability of local service (*i.e.* universal service). However, specific implementation of these areas are properly left to the states. Many other parties filing comments agree with this approach.<sup>1</sup>

5. Parties supporting strict national rules in each of these areas obviously are motivated by self-serving financial interests. Our Initial Comments discuss how, under the 1996 Act, the FCC's authority and jurisdiction are limited, and the tentative conclusions reached by the FCC in its NPRM are inconsistent with the 1996 Act. Many other initial comments concur with this opinion to varying degrees.<sup>2</sup> For firms operating nationally (or internationally) a "one-size-fits-all" paradigm has surface appeal; however, the outcome of such a situation has far-

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<sup>1</sup> For example, see initial comments of the New York State Department of Public Service, Michigan Public Service Commission Staff, Pacific Telesys Group, Oklahoma Corporation Commission, Office of the Ohio Consumers' Counsel, Public Utilities Commission of Ohio, Municipal Utilities, Maryland Public Service Commission, Lincoln Telephone, GTE Service Corporation, Georgia Public Service Commission, Connecticut Department of Public Utility Control, United State Telephone Association, Missouri Public Service Commission, National Association of Regulatory Utility Commissioners, Citizens Utilities Company, Bell Atlantic, Staff of the Indiana Utility Regulatory Commission, Alabama Public Service Commission, Illinois Commerce Commission, Maine Public Utilities Commission *et al*, Idaho Public Utilities Commission, Washington Utilities and Transportation Commission, U S WEST, and Wyoming Public Service Commission.

<sup>2</sup> Specifically, see initial comments of the New York State Department of Public Service, the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

reaching negative impacts. Any FCC regulations that go beyond the general implementation requirements of the 1996 Act will likely impede competition rather than expedite it. As evidenced by commenters, states proactively are implementing both state laws and the 1996 Act without the help of strict national rules. These individual state actions are not contrary to the intent of the 1996 Act. However, contrary to the opinion that if competition is encouraged, people will come, the evidence in this NPRM suggests otherwise. In the States of Montana, South Dakota, Maine, and Idaho, local competition has been allowed and encouraged; nevertheless, no competitors have graced these states with competition. In more populous urban states, where profit potentials are higher, those states have been working to produce a competitive market, again without the assistance of strict national rules. All of these efforts should not be negated by the institution of specific national rules. Any rules promulgated by the Commission should allow for the kind of efforts currently being made in the states.

#### Costing and Pricing Issues

6. The CoPUC strongly urges the Commission not to adopt specific costing and pricing rules, but to allow the states to adopt appropriate standards. As evidenced by the myriad proposals offered in initial comments, it is apparent that the same arguments that have been heard for years before state regulatory agencies are being touted before the FCC. The CoPUC has heard all of these arguments and dealt with them appropriately. For the FCC to develop any specific costing and pricing rules would, at the very, least defeat the ongoing efforts of the states and would be contrary to the intent of the 1996 Act. Since the states have been put in the position by the 1996 Act of evaluating and approving the proposals of the various market players, it is incongruous to assume that the FCC would or should get involved in the intricacies

of cost study development and analysis.

7. Many parties in their initial comments advocate utilization of various forms of Total Service Long Run Incremental Costs (TSLRIC) or Long Run Incremental Costs (LRIC) as a basis for assignment of prices for telephone services. Some parties provide their opinions on the proper method of conducting such studies. Many parties advise the Commission to include some or all of the following in the assignment of prices: a reasonable profit (as per Section 252 (d) of the 1996 Act), embedded costs, and/or various forms of joint or common costs. One can deduce from the various arguments made to the Commission that methodologies that use LRIC and/or TSLRIC to determine prices can be employed to produce prices that are biased to serve the particular interests of the commenting party.

8. These biased prices may be enabled by the flexibility or unclarity of ~~the~~ rules determining the methodology employed, the interpretation of the rules in the production of the cost studies, and/or the interpretation of the cost studies. As may be deduced from the assertions of the many and varied parties, although LRIC/TSLRIC cost studies and allocation of other costs may be tools useful in the determination of prices, no LRIC/TSLRIC methodology will by itself produce efficient, just and reasonable prices.

9. Since LRIC/TSLRIC studies are likely to be biased and these biased results will need to be thoroughly and critically reviewed, it is the CoPUC's opinion that such an intense review should remain in the states. Without such a capability, the state commissions cannot make proper decisions on nondiscriminatory, just and reasonable rates with respect to interconnection, unbundled network elements, and resale.

10. Past experience at the CoPUC exhibits an ongoing working relationship between

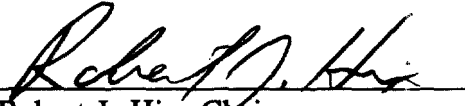
the entity that is providing cost support information and the state commission. Despite explicit costing and pricing rules in Colorado, the companies that provide cost information in support of rate filings do so with remarkably dissimilar techniques and procedures. The CoPUC must be able to effectively communicate with all entities to obtain proper supporting information, to clarify assumptions, or to correct mistakes. This process is already in place in Colorado and in other states. We envision immense problems would occur if the FCC were to attempt to perform this process at a national level. The most strident advocates of national costing and pricing policies would benefit by overloading the already burdened Commission, thus allowing for the possibility of incomplete review of the information.

11. Alternatively, simply establishing national costing and pricing guidelines for the states to follow is likely to have entities playing a federal/state whipsaw game trying to interpret the national requirements. This has the effect of negating any meaningful review of pricing proposals by the states.

12. The states are in the best position to: (1) review cost studies, TSLRIC or otherwise; (2) determine what supplemental information might be necessary; and (3) decide the relevance of the information in order to make an informed decision regarding nondiscriminatory, just and reasonable rates.

Dated at Denver, Colorado this \_\_\_\_th day of May, 1996.

Respectfully submitted,

  
Robert J. Hix, Chairman

  
Vincent Majkowski, Commissioner

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